

1 EDMUND G. BROWN JR., Attorney General  
of the State of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 LESLIE E. BRAST, State Bar No. 203296  
Deputy Attorney General  
4 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
5 Telephone: (415) 703-5548  
Facsimile: (415) 703-5480

6 Attorneys for Complainant

7  
8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-292

13 **DAVID JOE CHAVEZ**  
14 10304 McNight N.E.  
Albuquerque, NM 87112

**ACCUSATION.**

15 Registered Nurse License No. 665788

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Ruth Ann Terry, M.P.H., R.N. (Complainant), brings this Accusation  
19 solely in her official capacity as the Executive Officer of the Board of Registered Nursing  
20 (Board), Department of Consumer Affairs.

21 2. On or about September 16, 2005, the Board issued Registered Nurse  
22 License Number 665788 to David Joe Chavez (Respondent). The license was in full force and  
23 effect at all times relevant to the charges brought herein; it expired on April 30, 2007, and has not  
24 been renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the  
27 following laws. All section references are to the Business and Professions Code (Code) unless  
28 otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

## STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.”

7. California Code of Regulations, title 16, section 1442, states:

“As used in Section 2761 of the code, ‘gross negligence’ includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.”

8. California Code of Regulations, title 16, section 1443, states:

“As used in Section 2761 of the code, ‘incompetence’ means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.”

///

///

9. California Code of Regulations, title 16, section 1443.5 states:

“A registered nurse shall be considered to be competent when he/she consistently demonstrates the ability to transfer scientific knowledge from social, biological and physical sciences in applying the nursing process, as follows:

(1) Formulates a nursing diagnosis through observation of the client's physical condition and behavior, and through interpretation of information obtained from the client and others, including the health team.

(2) Formulates a care plan, in collaboration with the client, which ensures that direct and indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and for disease prevention and restorative measures.

(3) Performs skills essential to the kind of nursing action to be taken, explains the health treatment to the client and family and teaches the client and family how to care for the client's health needs.

(4) Delegates tasks to subordinates based on the legal scopes of practice of the subordinates and on the preparation and capability needed in the tasks to be delegated, and effectively supervises nursing care being given by subordinates.

(5) Evaluates the effectiveness of the care plan through observation of the client's physical condition and behavior, signs and symptoms of illness, and reactions to treatment and through communication with the client and health team members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided."

## COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay reasonable investigation and enforcement costs of the case.

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8

0  
1  
2  
3  
4  
5  
6  
7  
8

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2  
3  
4  
5  
6  
7  
8

5  
6  
7  
8

7  
8

1                                    SECOND CAUSE FOR DISCIPLINE

2                                    (Verbal Abuse of Patient)

3                    13.      Respondent is subject to disciplinary action under Code section 2761,  
4 subdivision (a), for unprofessional conduct in that he verbally abused a patient, as described in  
5 paragraph 11, above.

6                                    THIRD CAUSE FOR DISCIPLINE

7                                    (Incompetence and/or Gross Negligence: Failure to Seek Physician Order)

8                    14.      Respondent is subject to disciplinary action under Code section 2761,  
9 subdivision (a)(1), for gross negligence and/or incompetence in that he failed to seek a  
10 physician's order for medication or soft restraints before starting IV catheterization of a  
11 combative patient, as described in paragraph 11, above.

12                                   FOURTH CAUSE FOR DISCIPLINE

13                                   (Failure to Document Incident)

14                    15.      Respondent is subject to disciplinary action under Code section 2761,  
15 subdivision (a), for unprofessional conduct in that he failed to document an incident in which a  
16 patient was injured after being struck and/or restrained by Respondent, as described in paragraph  
17 11, above.

18                                   FIFTH CAUSE FOR DISCIPLINE

19                                   (Failure to Report Incident)

20                    16.      Respondent is subject to disciplinary action under Code section 2761,  
21 subdivision (a), for unprofessional conduct in that he failed to report an incident in which a  
22 patient was injured after being struck and/or restrained by Respondent, as described in paragraph  
23 11, above.

24                                   SIXTH CAUSE FOR DISCIPLINE

25                                   (Inappropriate Physical Contact with Co-Worker)

26                    17.      Respondent is subject to disciplinary action under Code section 2761,  
27 subdivision (a), for unprofessional conduct in that he grabbed a co-worker's shoulder, as  
28 described in paragraph 11, above.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. Revoking or suspending Registered Nurse License Number 665788, issued to David Joe Chavez;

3. Taking such other and further action as deemed necessary and proper.

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SF2008400935  
40233605.wpd